IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1612 OF 2006

Jaiprakash H. Gupta .. Petitioner.

vs.

State of Maharashtra

& Ors. .. Respondents.

Shri Ashok B. Mishra for Petitioner.

Mrs. A.S. Pai, APP., for State.

CORAM : J.N. PATEL, AND

SMT. ROSHAN DALVI, JJ.

DATE : 24th August, 2006.

P.C.

. The petitioner who is the complainant has come with a grievance that the prosecution may not examine all the important witnesses who are cited in the charge sheet and is also apprehensive that he may not get justice in the trial Court and, therefore, he has sought transfer of the matter for trial to any other appropriate Court.

2. The apprehension of the petitioner that he would not get justice in the trial Court appears to be unfounded.

3. No doubt it is the privilege of the prosecution to choose its witnesses as the burden is on the prosecution to prove the case but that does not mean that they should not examine all material and important witnesses. Therefore, we dispose of this petition with a direction that the prosecutor conducting the trial will examine all important and material witnesses in the case. Further, if the prosecutor decides to drop certain witnesses as unnecessary or not required, he shall make a written application to the trial Court giving reasons for dropping the witnesses and that the trial Court shall examine such a request objectively and pass appropriate orders.

4. We are required to issue these directions to the prosecutor because of the apprehension expressed by the petitioners through their advocate before this Court.

5. We expect the trial Court which is the Court of Sessions to continue with the trial day to day and in case witnesses who are required to be examined by the prosecution are not available take coercive steps to procure their presence and give reasonable and sufficient opportunity to the prosecution to produce the witnesses. This sufficiently protects the interests of the complainant who is the petitioner before the Court. The complainant may also have an advocate appointed to watch the proceedings and can file application before the trial Court if he has any grievance in the matter which the trial Court would dispose of by passing appropriate orders

and if the trial Court finds that the complainant is unnecessarily interfering with the progress of the case he may observe so and reject such application.

6. Petition disposed of accordingly. The Registrar Judicial to communicate this order to the trial Court.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)